

**UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA  
WILKES-BARRE DIVISION**

**IN RE:**

**CHAPTER 13**

**CASE NO.: 5:18-bk-04806-MJC**

**Guy S. Smith,  
aka Guy Smith,**

**Debtor,**

\_\_\_\_\_/

**U.S. BANK TRUST NATIONAL ASSOCIATION,  
NOT IN ITS INDIVIDUAL CAPACITY BUT  
SOLELY AS OWNER TRUSTEE FOR RCF 2  
ACQUISITION TRUST C/O U.S. BANK TRUST  
NATIONAL ASSOCIATION,**

**Movant,**

**v.**

**Guy S. Smith,  
aka Guy Smith,  
Jack N Zaharopoulos (Trustee),**

**Respondents.**

\_\_\_\_\_/

**MOTION OF U.S. BANK TRUST NATIONAL ASSOCIATION, NOT IN ITS  
INDIVIDUAL CAPACITY BUT SOLELY AS OWNER TRUSTEE FOR RCF 2  
ACQUISITION TRUST C/O U.S. BANK TRUST NATIONAL ASSOCIATION FOR  
RELIEF FROM AUTOMATIC STAY**

Secured Creditor, U.S. Bank Trust National Association, not in its Individual Capacity but Solely as Owner Trustee for RCF 2 Acquisition Trust C/O U.S. Bank Trust National Association, by and through the undersigned counsel, hereby moves this Court, pursuant to 11 U.S.C. § 362(d), for a modification of the automatic stay provisions for cause, and, in support thereof, states the following:

1. Debtor(s), Guy S. Smith, aka Guy Smith, filed a voluntary petition pursuant to Chapter 13 of the United States Bankruptcy Code on November 14, 2018.
2. Jurisdiction of this cause is granted to the Bankruptcy Court pursuant to 28 U.S.C. § 1334, 11 U.S.C. § 362(d), Fed. R. Bankr. P. 4001(a), and all other applicable rules and statutes affecting the jurisdiction of the Bankruptcy Courts generally.
3. On January 31, 2008, Guy S. Smith, aka Guy Smith executed and delivered a Promissory Note (“Note”) and a Mortgage (“Mortgage”) securing payment of the Note in the amount of \$312,120.00 to GMAC Bank. A true and correct copy of the Note is attached hereto as Exhibit “A.”
4. The Mortgage was recorded on May 22, 2007, in Book 2305 at Page 8337 of the Public Records of Monroe County, Pennsylvania. A true and correct copy of the Mortgage is attached hereto as Exhibit “B.”
5. The Mortgage was secured as a lien against the property located in Monroe County commonly known as Lot 14 Grandview Terrace West, East Stroudsburg, PA 18301, formerly known as 10 Thomas Pt, East Stroudsburg, Pennsylvania 18301.
6. The terms and conditions of the Note and Mortgage were later amended pursuant to the Loan Modification Agreement (“Agreement”) made January 31, 2008. Said Agreement created a new Maturity Date of February 1, 2038. A copy of the loan modification is attached hereto as Exhibit “C”.
7. The loan was lastly assigned to U.S. BANK TRUST NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS OWNER TRUSTEE FOR RCF 2 ACQUISITION TRUST C/O U.S. BANK TRUST NATIONAL ASSOCIATION and said Assignment of Mortgage was recorded with the Monroe County Recorder of Deeds

on April 28, 2022 in Instrument Number 202213680. A true and correct copy of the Assignment of Mortgage is attached hereto as Exhibit “D”.

8. Based upon the Debtor(s)’ Chapter 13 First Amended Plan (Docket No.28), the Debtor intends to cure Secured Creditor's pre-petition arrearages within the Chapter 13 Plan and is responsible for maintaining post-petition payments directly to Secured Creditor. A true and correct copy of the Debtor(s)’ First Amended Chapter 13 Plan is attached hereto as Exhibit “E.”
9. Upon review of internal records, Debtor has failed to make the monthly payments of principal, interest, and escrow in the amount of \$1,803.17 which came due from June 1, 2021 to October 1, 2021; and payments in the amount of \$1,901.17 which came due from November 1, 2021 to May 1, 2022 respectively. There is currently a suspense balance of \$1,183.28.
10. Thus, Debtor(s)’ post-petition arrearage totaled the sum of \$21,140.76 through May 11, 2022. A copy of the payoff quote and the payment history is attached hereto as Exhibit “F”.
11. As of May 11, 2022, the current unpaid principal balance due under the loan documents is approximately \$201,786.87. Movant’s total claim amount, itemized below, is approximately \$324,599.49. See Exhibit “F.”

Principal	\$201,786.87
Interest From 07/01/20 To 05/30/22	\$17,169.08
Escrow/Impound Required	\$13,381.88
MI Premium Due	\$53.57

Deferred Amounts	\$91,768.65
Fees Currently Assessed	\$2,616.12
Less Unapplied Funds	(\$2,176.68)
Payoff Funds Required	\$324,599.49

12. The Property is most recently valued at \$359,900.00 by the Debtor's Schedule A/B. See Exhibit "G."

13. Under Section 362(d)(1) of the Code, the Court shall grant relief from the automatic stay for "cause" which includes a lack of adequate protection of an interest in property. Sufficient "cause" for relief from the stay under Section 362(d)(1) is established where a debtor has failed to make installment payments or payments due under a court-approved plan, on a secured debt, or where the Debtor(s) have no assets or equity in the Mortgaged Property.

14. As set forth herein, Debtor has defaulted on the secured obligation having failed to make all monthly post-petition installment payments due to Secured Creditor.

15. As a result, cause exists pursuant to 11 U.S.C. § 362(d) of the Code for this Honorable Court to grant relief from the automatic stay to allow Secured Creditor, its successor and/or assignees to pursue its state court remedies, including the filing of a foreclosure action.

16. Additionally, once the stay is terminated, the Debtor(s) will have minimal motivation to insure, preserve, or protect the collateral; therefore, Secured Creditor requests that the Court waive the 14-day stay period imposed by Fed.R.Bankr.P. 4001(a)(3).

**WHEREFORE**, Secured Creditor, prays this Honorable Court enter an order modifying

the automatic stay under 11 U.S.C. § 362(d), to permit Secured Creditor to take any and all steps necessary to exercise any and all rights it may have in the collateral described herein, to gain possession of said collateral, to waive the 14-day stay imposed by Fed.R.Bankr.P. 4001(a)(3), to seek recovery of its reasonable attorneys' fees and costs incurred in this proceeding, and to any such further relief as this Honorable Court deems just and appropriate.

Date: May 19, 2022

**Robertson, Anschutz, Schneid, Crane & Partners, PLLC**

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